

Hon. Karen A. Overstreet
Chapter: 11
Location: Seattle
Hearing Date: December 20, 2013
Hearing Time: 9:30 a.m.
Response Date: December 13, 2013

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re

JACOB BUTTNICK,

Debtor.

NO. 13-20151-KAO

FAIRVIEW INVESTMENT FUND I, LLC'S
RESPONSE TO RECEIVER'S MOTION TO
APPROVE ACCOUNTING, AWARD
COMPENSATION, CLARIFY TITLE TO
ASSETS AND GRANT RELIEF FROM
STAY WITH LEAVE TO CLOSE
RECEIVERSHIP PROCEEDINGS

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FAIRVIEW INVESTMENT FUND I, LLC'S RESPONSE TO
RECEIVER'S MOTION TO APPROVE ACCOUNTING,
AWARD COMPENSATION, ETC. - 1

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Most of the funds in question constitute the collateral of Fairview Investment Fund I, LLC (“**Fairview**”) pursuant to three deeds of trust. At most, the Receiver and BSSS are entitled to an administrative expense claim that would fall behind Fairview’s secured claim on its collateral. Accordingly, and although Fairview does not object to *allowance* of the Receiver and BSSS’s reduced compensation at this time, Fairview respectfully requests that *payment* not take place and that the funds held by the Receiver be turned over in full and sequestered pending further order of this Court.

Jacob Buttnick (the “**Debtor**”) filed a voluntary Chapter 11 petition on November 20, 2013 (the “**Petition Date**”). At the time, a receivership was pending in King County Superior Court, wherein AJBR had been appointed general receiver over the Debtor’s property, including property that the Debtor had assigned to AJBR pursuant to an assignment for the benefit of creditors executed on June 20, 2013. *See* Motion Exhibits 1 & 2 (Dkt. Nos. 19-1 & 19-2).

FAIRVIEW INVESTMENT FUND I, LLC'S RESPONSE TO
RECEIVER'S MOTION TO APPROVE ACCOUNTING,
AWARD COMPENSATION, ETC. - 2

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Case 13-20151-TWD Doc 31 Filed 12/12/13 Ent. 12/12/13 13:49:33 Pg. 2 of 5

1 The J&M Property serves as collateral for several loans, including three loans to which
2 Fairview has succeeded as assignee of the original lenders. Declaration of Nels Stemm (“**Stemm**
3 **Declaration**,” submitted concurrently herewith) ¶ 3. Specifically, Fairview is the assignee of the
4 secured loans originally made by the U.S. Small Business Administration, Bel Air & Briney, and
5 Rachel Briney. *Id.*; see also Proof of Claim No. 4. The secured status of these loans is not
6 disputed. See Motion Exhibit 1 (Dkt No. 19-1) at 5-6. Furthermore, the deeds of trust
7 evidencing these loans make clear that the collateral includes the rents from the J&M Property.
8 See Stemm Declaration ¶¶ 4-6 & Exhibits A-C. In other words, Fairview, as assignee of the
9 original beneficiaries of the deeds of trust, has a secured claim on all rental proceeds collected by
10 the Receiver from the J&M Property.

11 As a secured creditor with a claim on all rents, Fairview objects to the payment of the
12 Receiver and BSSS’s requested compensation before secured claims, including Fairview’s, are
13 paid. To that end, Fairview does not object to first-priority payment of the claims of other
14 secured creditors who establish a senior entitlement to rents. See *id.* ¶ 7. However, and as
15 further set forth below, Fairview submits that the allowed compensation of the Receiver and
16 BSSS is entitled at most to *administrative priority* status. Accordingly, Fairview respectfully
17 requests that payment of the Receiver and BSSS’s compensation, to the extent it is allowed, not
18 be authorized at this time.

19 III. ARGUMENT AND AUTHORITY

20 As an initial matter, there can be no doubt that as of the Petition Date, exclusive
21 jurisdiction over the assets that made up the receivership estate passed to the Bankruptcy Court
22 to administer in accordance with the Bankruptcy Code. See *In re Sundance Corp., Inc.*, 149
23 B.R. 641, 650 (Bankr. E.D. Wash. 1993) (“[R]e receivership property becomes property of a
24 bankruptcy estate upon filing of a petition, [so] control and decisions affecting the receivership
25 assets which were formerly *in custodia legis* of the state court come under and become the
26 domain of the bankruptcy court.”).

1 Compensation of state court receivers and their professionals in bankruptcy is governed
2 by Sections 503(b)(3)(E), 503(b)(4), and 543(c)(2) of the Bankruptcy Code. The first two
3 sections bestow *administrative priority* status upon: (a) the “actual, necessary expenses . . .
4 incurred by . . . a custodian superseded under section 543,” (b) the “compensation for the
5 services of such custodian,” and (c) “reasonable compensation for professional services rendered
6 by an attorney” of such custodian. 11 U.S.C. §§ 503(b)(3)(E); 503(b)(4); *see also In re 245*
7 *Assocs., LLC*, 188 B.R. 743, 748 (Bankr. S.D.N.Y. 1995) (“Section 503(b)(3)(E) grants the
8 superseded receiver an *administrative claim* for his actual, necessary costs and expenses, and for
9 his compensation, and section 503(b)(4) covers the reasonable compensation payable to the
10 superseded custodian’s attorney or accountant.”) (emphasis added). The elevation of a receiver
11 and its professionals’ pre-petition compensation to administrative priority status is an exception
12 to the general rule that administrative expenses under 11 U.S.C. § 503 are only payable if they
13 were incurred *after* the filing of the debtor’s bankruptcy petition. *In re Snergy Props., Inc.*, 130
14 B.R. 700, 704 (Bankr. S.D.N.Y. 1991).

15 The third section, Section 543(c)(2), “deals with certain of the receiver’s post-petition
16 services,” *245 Assocs.*, 188 B.R. at 748, and its applicability is “limited to the ‘winding up’
17 duties imposed under sections 543(a) and (b).” *Id.* (citing *In re Posadas Assocs.*, 127 B.R. 278,
18 281 (Bankr. D.N.M. 1991). These sections deal with turnover of property by a custodian to the
19 trustee, and some courts have held that the costs of turnover are also entitled to *administrative*
20 *priority* status. *See In re Posadas Assocs.*, 127 B.R. at 281-82.

21 Here, even though Section 543(c)(2) only deals with the costs of turnover—and even
22 though compensation for a receiver’s pre-petition services is entitled at most to administrative
23 priority status, *already* constituting an exception to the general rule that only post-petition
24 expenses get priority status—the Receiver and BSSS assert that they are entitled under Section
25 543(c)(2) to immediate payment of *all* requested compensation. However, the funds from which
26 the Receiver proposes to pay this compensation appear to consist of rents subject to Fairview’s

1 secured claim, and administrative expense claims do not have priority over secured claims.
2 *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 4 (2000).
3 Accordingly, the Receiver and BSSS, who are administrative claimants, are not entitled to
4 receive payment from rent proceeds until secured claims, including Fairview's are paid. The
5 Receiver has cited no authority to the contrary.

6 **VI. CONCLUSION**

7 For the foregoing reasons, Fairview respectfully requests that payment of the Receiver
8 and BSSS's compensation, to the extent allowed, not take place until claims have been evaluated
9 and administered in this bankruptcy proceeding, and only upon further order of this Court.

10 DATED this 12th day of December, 2013.

11 CAIRNCROSS & HEMPELMANN, P.S.

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13 /s/ John R. Rizzardi

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